

REMARKS

Specification

The Examiner has requested that the spacing between the lines of the application as filed be increased. Accordingly, Applicants submit a replacement copy of the application as filed with larger spacing between the lines. No new matter has been added. Please replace previous pages 1 to 18 currently on file with the enclosed pages 1 to 26.

Drawings

A colour drawing (Figure 10A&B) is enclosed in triplicate with this Amendment. A Petition to Accept Colour Drawings and fee transmittal, is enclosed. Applicants respectfully request that the colour drawing be accepted.

Claims

By the instant Amendment, claims 1, 9, 19, 20 and 24 to 27 have been amended, and claim 28 has been entered. Claims 1-28 are in the case. Claim 9 was amended to correct a typographical error.

It was the Examiner's opinion that claims 11 to 15, 17 and 18 would be allowable in independent form. Applicants thank the Examiner for this opinion; however, Applicants believe that with the instant amendment these claims are in condition for allowance in their present form.

Claim Rejections - 35 USC § 102

It was the Examiner's opinion that previous claims 1 to 3, 5 to 10, 13, 19, 21 and 24 to 27 are anticipated by Goble *et al.* (US 2002/0065557). Applicants respectfully disagree.

The device taught by Goble *et al.* requires modification of a facet joint. That is, Goble *et al.* teaches throughout that all (e.g., page 1, paragraphs 0015 and 0016) or at least a portion (e.g., claim 1) of a patient's spinal facet joint is resected and replaced by a prosthetic facet joint. Note, for example, paragraph 0043 of Goble *et al.* which describes replacement of the natural anatomy of a facet joint with the prosthetic device taught therein.

In contrast, the spinal facet cap of present invention does not require modification of a facet joint. As taught in the instant application (see, for example, page 5, lines 26 to 29 of the specification as filed), spinal facet caps are implanted in facet joints that are substantially or entirely intact. Thus, spinal facet caps are surgically implanted with minimal or no modification of the facet joints involved.

Accordingly, in an effort to expedite prosecution, claims 1, 19, and 20 have been amended to recite "an unmodified facet joint". With this amendment it is believed that the present invention is better distinguished from Goble *et al.* Withdrawal of this rejection and reconsideration of claims 1 to 3, 5 to 10, 13, 19, and 21 is respectfully requested.

The Examiner was of the opinion that the structure of previous claims 24 to 27 was not proper for method claims. Current claims 24 to 27 have been amended to recite method steps. Withdrawal of the rejection and reconsideration of claims 24 to 27 is respectfully requested.

Claim Rejections - 35 USC § 103

It was the Examiner's opinion that previous claims 4, 16, and 20 were unpatentable over Goble *et al.*

Regarding claim 4, it was the Examiner's opinion that although Goble *et al.* do not disclose that both surfaces are planar it would have been an obvious matter of design choice to make both surfaces of the prosthesis planar. Regarding claim 16, it was the Examiner's opinion that it would have been obvious to make a shim of adjustable thickness. Regarding claim 20, it was the Examiner's opinion that it would have been obvious to have implanted two prostheses. As discussed in detail above, the device taught by Goble *et al.* requires resection of the existing facet joint and replacement thereof by a prosthetic facet joint. In contrast, in the present invention, spinal facet caps are implanted in facet joints that are substantially or entirely intact. Thus, facet caps are surgically implanted with minimal or no modification of the facet joints involved. As amended herein, claims 1, 19, and 20 recite that a spinal facet cap is implanted in "an unmodified facet joint". Applicants submit that in view of these amendments, claims 4, 16 and 20 are allowable. Withdrawal of this rejection and reconsideration of claims 4, 16 and 20 is respectfully requested.

It was the Examiner's opinion that previous claims 22 and 23 were unpatentable

over Goble *et al.* in view of Simon *et al.* (US 6,470,207). Applicants respectfully traverse. Goble *et al.* is deficient because it does not teach or even suggest correcting scoliosis; i.e., abnormal curvature of the spine. Further, Goble *et al.* is deficient in that resection of at least a portion of the facet joint is required. Simon *et al.* teaches an X-ray imaging device, a surgical instrument navigation system, and methods of use. Simon *et al.* does not teach treating scoliosis. Hence Simon *et al.* does not correct this deficiency. In view of the foregoing, withdrawal of the rejection and reconsideration of claims 22 and 23 is respectfully requested.

Claim 28 has been added to the application. A Fee Transmittal form is enclosed in respect of the fee associated with this additional claim. Please charge any other fees that may be required, for which no cheque is enclosed, to Deposit Account No. 17-0110.

It is submitted that the instant application is in condition for allowance and Applicants respectfully request early action in this regard.

Should the Examiner wish to discuss this Amendment, a telephone call to the undersigned agent at 613-533-6000 ext. 77483 would be welcomed.

Respectfully submitted,



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